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JUDGE: M. A. Mahoney

PARTIES: Michael Lane Stephenson, Nikki Hewitt Stephenson

CHAPTER: 7

ATTORNEYS: M. Wetzel, C. Kern

DATE: 5/21/98

KEY WORDS:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

MICHAEL LANE STEPHENSON
NIKKI HEWITT STEPHENSON

Case No. 97-10463-MAM-7

Debtors.

**ORDER OVERRULING TRUSTEE'S OBJECTION
TO HOMESTEAD EXEMPTION BUT DECLARING
EXEMPTION LIMITED TO \$10,000**

Melissa Wetzel, Mobile, Alabama, Attorney for Debtors
Christopher Kern, Mobile, Alabama, Trustee

This case is before the Court on the trustee's objection to the debtors' exemption to the extent that the debtors claim or seek to hold any interest in their real property in excess of their statutory exemption of \$10,000. A hearing was held and appearances are as noted in the record. This Court has jurisdiction hear this case pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. For the reasons indicated below, the Court is sustaining the objection.

FACTS

The facts are not in dispute. The debtors filed this Chapter 7 bankruptcy case on February 5, 1997. They listed their homestead on Schedule A of the bankruptcy petition with a value of \$90,000. They indicated there were two liens on the home totaling \$74,130.16. Therefore, there was equity of \$15,869.84 in the home.

On Schedule C, "Property Claimed as Exempt," the debtors again listed the homestead. They stated that the Debtors' interest was \$90,000. They stated "value exempt: \$10,000" and listed the applicable exemption law as "Alabama Code Section 6-10-2."

The Debtors were discharged on May 21, 1997. The discharge was set aside for the limited purpose of allowing the filing of a reaffirmation agreement on July 22, 1997. The reaffirmation agreement was filed on July 14, 1997.

The trustee filed an objection to the exemption on March 30, 1998, requesting the Court to limit the exemption to \$10,000. The debtors responded stating the objection is untimely.

LAW

Fed. R. Bankr. P. 4003(b) requires the trustee or any creditor to file objections to the list of property a debtor claims as exempt “within 30 days after the conclusion of the meeting of creditors . . . , or the filing of any amendment to the list or supplemental schedules unless . . . further time is granted by the court.” The meeting of creditors concluded on March 17, 1997. No objection to exemptions was filed by April 16, 1997, nor was any extension of time granted. Therefore, if the claimed exemption included all of the equity of the Stephensons in their homestead, an objection to exemption now would be untimely. If the claimed exemption is only the \$10,000 allowed by ALA. CODE § 6-10-2 (1975), then the objection, although not timely, seeks really to clarify that the trustee still holds as an asset to be administered any amount of equity in the home over \$10,000.

The Court concludes that the Stephensons claimed only a \$10,000 exemption in the homestead equity. Schedule C clearly stated that the “value exempt” was \$10,000. The state exemption which applied was ALA. CODE § 6-10-2 (1975), which only allows a maximum exemption of \$10,000. Finally, the case law supports this position.

The U.S. Supreme Court case on exemption objections, *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S. Ct. 1644, 118 L. Ed. 2d 280 (1992) held that even an improperly claimed exemption is allowed unless objected to within the statutory time limits. In that case, the debtor

had listed a lawsuit of unknown value as entirely exempt. Her schedule “claimed as exempt property the money that she expected to win in her . . . suit.” 503 U.S. at 640. In this case, the debtors claimed as exempt only \$10,000, not an unknown amount. Therefore, the trustee had no need to object to the amount claimed since it did not exceed the statutory maximum.

In *Allen v. Green (In re Green)*, 31 F.3d 1098 (11th Cir. 1994), the Circuit Court held that a debtor who claimed as exempt her recovery in a lawsuit which she valued at \$1.00 had exempted the entire value of the suit even though it later settled for \$15,000. Under “value claimed exempt” on her Schedule C, Ms. Green has listed \$1.00. It was clear that she was claiming all of the lawsuit as exempt. She valued the suit at \$1.00 and claimed \$1.00 as exempt. As stated in *Green*:

[A]n unstated premise of the [Supreme] Court’s holding [in *Taylor*] was that a debtor who exempts the entire reported value of an asset is claiming the “full amount” whatever it turns out to be. (Cites omitted.)

Green, 31 F.3d 1100. For this reason, the Eleventh Circuit Court in *Green* held that a lawsuit recovery exempted for \$1.00—the entire reported value—claimed the entire recovery.

In this case, the Stephensons did not claim the entire reported equity value of their home. They claimed only the maximum state homestead exemption which still left equity unclaimed. That equity is property of the estate until the trustee liquidates it or abandons it.¹ To be like the *Taylor* or *Green* case, the Stephensons would have needed to value the property at \$90,000 (as they did) and list under “value exempt” the sum of \$15,869.84 or “all equity.”

¹The debtors, however, may own as their property post filing appreciation in value. *In re Green*, 31 F.3d at 1101, n.6; *In re Reid*, 940 F.2d 1317, 1323 (9th Cir. 1991); *In re Rappaport*, 19 B.R. 971, 973 (Bankr. E.D. Pa. 1982).

Since the trustee did not need to object to the debtors' exemption, the objection's untimeliness is irrelevant. The Court concludes that the exemption was already limited to \$10,000 and the trustee should administer as property of the estate any amount exceeding that exemption unless he ultimately decides to abandon any claim to the equity under 11 U.S.C. § 554.

The debtors' discharge does not impact the trustee's rights or duties as they relate to asset administration. The discharge affects the debtors' relationship to creditors; it has no effect on the trustee's rights in property of the estate.

THEREFORE, IT IS ORDERED that the objection of the Trustee to the debtors' exemption is OVERRULED except that the Court declares that the debtors' exempt interest in the property at 2445 Bobwhite Trail, Mobile, Alabama, is limited to the statutory maximum of \$10,000 as claimed.

Dated: May 21, 1998

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE